IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12550 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARBUDA ALLOYS PVT LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12550 of 2002

MR PARESH M DAVE for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 08/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

Rule. Senior Central Government Standing Counsel Mr. D.N. Patel waives service of Rule. It is pointed

out by the learned counsel for both the sides that similar question arose before a Division Bench in Special Civil Application Nos. 10603 of 2001, 10624 of 2001, 10721 of 2001 in which the Division Bench of this Court comprising of the Hon'ble the Chief Justice Mr. D.M. Dharmadhikari (as His Lordship then was) and Mr. Justice D.A. Mehta made an order dated 25.1.2002 in which the Court, without going into the question whether the new period of limitation or the old would apply to the appeal preferred by the petitioners, held that since the assessees were misled by the communication contained in the orders-in-original stating three months of limitation, set aside the orders of the appellate authority and remanded the appeals to be decided afresh on merits.

Even in the present case, admittedly, the order in original refers to three months' period of limitation in note No. 2 and therefore, the assessee would have been misled by that communication not realising that by the subsequent change in law the period of limitation was reduced. In our view also it would be in the interest of justice to see that the assessee does not suffer due to the mention, in the communication, of a period of limitation as three months.

Following the aforeaid order dated 25.1.202 and without laying down any precedent on a question of law that may be involved as regards the effect of the amendment in period of limitation, we set aside the impugned orders of the Tribunal and the CIT(A) and remand the matter to the CIT(A) to decide the appeal afresh on merits. Rule is made absolute accordingly with no order as to costs.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)

(pkn)